

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

INGERSOLL-RAND COMPANY,

Plaintiff

CIV. NO.: 08 CV 3532 NRB

v.

CNA INSURANCE COMPANY, AS SUCCESSOR
TO CONTINENTAL INSURANCE COMPANY,

Defendant

-----X

CONTINENTAL CASUALTY COMPANY,

Third-Party Plaintiff,

v.

AIU INSURANCE COMPANY, et al.,

Third-Party Defendants.

-----X

**NOTICE OF MOTION FOR
ADMISSION OF COUNSEL PRO HAC VICE**

PLEASE TAKE NOTICE that, upon the annexed Motion for Admission of Michael J. Smith, Esquire *Pro Hac Vice* and the Affidavit of Michael J. Smith, Esquire dated July 17, 2008, together with attachments submitted therewith, Everest Reinsurance Company (f/k/a Prudential Reinsurance Company) and Mt. McKinley Insurance Company (f/k/a Gibraltar Casualty Company), by and through their undersigned counsel, will move this Court for an Order pursuant to Local Civil Rule 1.3(c) of the Local Rules for the Untied States District Courts for the Southern District of New York admitting Michael J. Smith to the bar of this Court *Pro Hac Vice* in order to represent Mt. McKinley Insurance Company and Everest Reinsurance Company in the above -captioned case.

Jul 23 2008

025-657480
PL

COZEN O'CONNOR

BY: 

MELISSA BRILL (4374)

45 Broadway

New York, NY 10006

Attorneys for Third-Party Defendants

Mt. McKinley Insurance Company and

Everest Reinsurance Company

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**MOTION FOR
ADMISSION OF COUNSEL PRO HAC VICE**

MELISSA BRILL, an Attorney at Law admitted to practice in the state and federal courts in New York, and in good standing therein, upon the annexed Affidavits of Michael J. Smith sworn to the 17th of July, 2008, the Affirmation of Melissa Brill, Esquire sworn to the 16th of July, 2008, and all proceedings heretofore had herein, moves the Court to admit Michael J. Smith, Esquire, a member in good standing of the Bar of the Commonwealth of Pennsylvania, to appear and act as counsel for defendants, Mt. McKinley Insurance Company and Everest Reinsurance Company, in the above-captioned case *Pro Hac Vice* pursuant to the General Rules of the United States District Court for the Southern District of New York, and for such other and further relief as this Court deems just and equitable and in furtherance of the ends of justice.

Respectfully submitted,

COZEN O'CONNOR

BY:



MELISSA BRILL (4374)

45 Broadway

New York, NY 10006

Attorneys for Defendant

Mt. McKinley Insurance Company and
Everest Reinsurance Company

IN THE UNITED STATES DISTRICT COURT
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AFFIRMATION

Melissa Brill, Esquire, being duly sworn, deposes and says as follows:

1. I am an attorney duly licensed to practice law in the State of New York, and a member of the law firm of Cozen O'Connor, attorneys for defendants, Mt. McKinley Insurance Company and Everest Reinsurance Company in the above-entitled action.
2. I am fully familiar with the facts and circumstances as hereinafter set forth, and make this Affidavit in support of the defendant's Motion to have Michael J. Smith, Esquire admitted as co-counsel, *Pro Hac Vice*, with respect to the above-entitled action.
3. The affiant has been acting as counsel for Mt. McKinley Insurance Company and Everest Reinsurance Company in this matter, and respectfully requests that the Court allow Michael J. Smith, Esquire to be admitted *Pro Hac Vice* for purposes of serving as co-counsel for Mt. McKinley Insurance Company and Everest Reinsurance Company.

4. Granting this Motion will not delay this matter in any manner. The purpose of this Motion is to allow Michael J. Smith, Esquire to assist in the defense of this matter so that it can be concluded as expeditiously as possible.

5. The affiant respectfully submits to the Court that Michael J. Smith, Esquire is not only an excellent attorney, but is also of unimpeachable character and would do justice to both his client and the Bar. The Court is respectfully referred to the attached Affidavit regarding Michael J. Smith, Esquire's qualifications with the respect to the subject claims.

6. The affiant respectfully requests that Michael J. Smith, Esquire be admitted *Pro Hac Vice* in the above-entitled action to serve as co-counsel with respect to the subject claims.

Wherefore, Melissa Brill, Esquire respectfully requests that the Court grant an Order allowing the admission, *Pro Hac Vice*, of Michael J. Smith, Esquire to the United States District Court for the Southern District of New York to practice with respect to the above-captioned action, together with such other and further relief as the Court may deem just and proper.

DATED: New York, New York
July 16, 2008



Melissa Brill (MB 4374)

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AFFIDAVIT

I, Michael J. Smith being duly sworn according to law, depose and say, that:

1. I am a resident of Pennsylvania and have been a practicing attorney in the Commonwealth of Pennsylvania since 1994. I am a member of the law firm of Cozen O'Connor, which maintains an office at 45 Broadway Atrium, New York, New York 10006. I make this affidavit in support of my application for admission *Pro Hac Vice* on behalf of defendants, Mt. McKinley Insurance Company and Everest Reinsurance Company, in the captioned matter.

2. I am a member in good standing of the State Bar of the Commonwealth of Pennsylvania and am duly licensed and admitted to practice law by the Commonwealth of Pennsylvania. A copy of my Certificate of Good Standing for the Supreme Court of Pennsylvania is annexed hereto and marked as Exhibit "A".

3. I am also a member in good standing of the Bar of the State of New Jersey and am duly licensed and admitted to practice law by the State of New Jersey. A copy of my

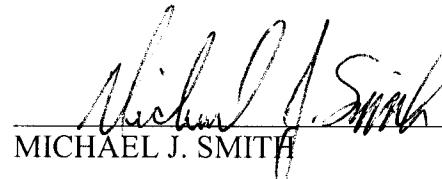
Certificate of Good Standing for the Supreme Court of New Jersey is annexed hereto and marked as Exhibit "B".

4. No disciplinary proceedings or criminal charges of any kind have ever been instituted against me in the Commonwealth of Pennsylvania, the State of New Jersey or in any other state.

5. If the Court, in its discretion, allows my Motion to Appear *Pro Hac Vice* in the above-captioned matter, with reference to all matters, incidents, or proceedings, I agree that I shall be subject to the order and amenable to a disciplinary action and the civil jurisdiction of this Court and the Southern District of New York in all respects as if I were a regularly admitted and licensed member of the United States District Court in good standing.

6. I am associated and have personally appearing with me in these proceedings, Melissa Brill, Esquire an attorney who is duly and legally admitted to practice in the State of New York, and upon whom service may be had in all matters connected with the above-captioned cause, to any disciplinary matter arising out of same, with the same effect as if personally made on me within the Commonwealth of Pennsylvania.

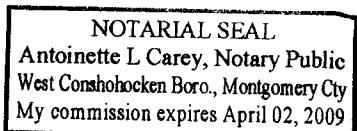
7. I certify that all of the foregoing statements made by me are true, and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



MICHAEL J. SMITH

Sworn to me and subscribed
before me this 15th day
of July, 2008

Antoinette L. Carey
Notary Public



CERTIFICATE OF SERVICE

I, Melissa Brill, Esquire, hereby certify that on July 22, 2008, a true copy of **MOTION FOR ADMISSION OF COUNSEL PRO HAC VICE** by mailing a copy of each by first class mail via United States Postal Service to the following person at the last known address as set forth after each name below:

TO:

Edward M. Pinter
FORD MARRIN EXPOSITIO WITMEYER & GLESER, L.L.P.
 Wall Street Plaza
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 212.269-4900

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 1211 Avenue of the Americas
 New York, NY 10036
 212.896.9000



Melissa Brill, Esq.



Supreme Court of Pennsylvania

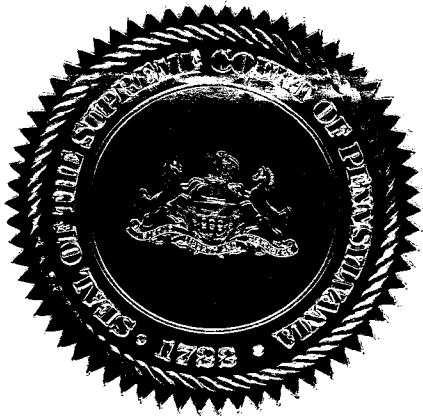
CERTIFICATE OF GOOD STANDING

Michael John Smith, Esq.

DATE OF ADMISSION

January 4, 1994

The above named attorney was duly admitted to the bar of the Commonwealth of Pennsylvania, and is now a qualified member in good standing.



**Witness my hand and official seal
Dated: July 7, 2008**

A handwritten signature in black ink.

Patricia A. Johnson
Chief Clerk

Supreme Court of New Jersey



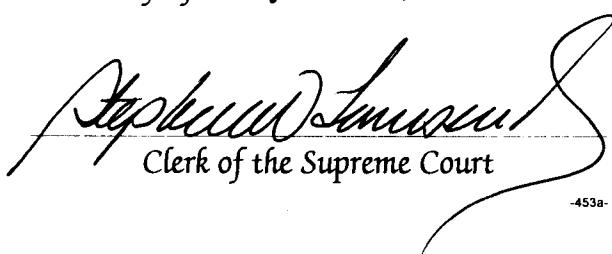
Certificate of Good Standing

This is to certify that **MICHAEL J SMITH**
(No. **030621993**) was constituted and appointed an Attorney at Law of New Jersey on **December 21, 1993** and, as such, has been admitted to practice before the Supreme Court and all other courts of this State as an Attorney at Law, according to its laws, rules, and customs.

I further certify that as of this date, the above-named is an Attorney at Law in Good Standing. For the purpose of this Certificate, an attorney is in "Good Standing" if the Court's records reflect that the attorney: 1) is current with all assessments imposed as a part of the filing of the annual Attorney Registration Statement, including, but not limited to, all obligations to the New Jersey Lawyers' Fund for Client Protection; 2) is not suspended or disbarred from the practice of law; 3) has not resigned from the Bar of this State; and 4) has not been transferred to Disability Inactive status pursuant to Rule 1:20-12.

Please note that this Certificate does not constitute confirmation of an attorney's satisfaction of the administrative requirements of Rule 1:21-1(a) for eligibility to practice law in this State.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Supreme Court, at Trenton, this 9TH day of July , 20 08


Stephen J. Schmitz
Clerk of the Supreme Court

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ORDER

The Court, having considered the Motion for *Pro Hac Vice* Admission of Michael J. Smith, Esquire, is of the opinion that said Motion should be granted, and accordingly ORDER that Michael J. Smith, Esquire be admitted *Pro Hac Vice* for the limited purpose of serving as co-counsel for defendants Mt. McKinley Insurance Company and Everest Reinsurance Company, at the trial of this case and in any associated activity which may take place before the Court in connection with the above-referenced case.

SIGNED this _____ day of _____, 2008.

HON. NAOMI R. BUCHWALD
UNITED STATES DISTRICT JUDGE